

CAUSE OF ACTION

Case law cited below derived and resourced from

Instructions for Civil Rights Claims Under Section 1983

https://www.ca3.uscourts.gov/sites/ca3/files/4_Chap_4_2014_fall.pdf

1) DEPRIVATION OF RIGHTS UNDER COLOR OF LAW, State Acts

“By the plain terms of § 1983, two – and only two – allegations are required in order to state a cause of action under that statute.

First, the plaintiff must allege that some person has deprived [plaintiff] of a federal right.

Second, plaintiff must allege that the person who has deprived him of that right acted under color of state or territorial law.” *Gomez v. Toledo*, 446 U.S. 635, 640 (1980); see also, e.g., *Groman v. Township of Manalapan*, 47 F.3d 628, 633 (3d Cir. 1995) (“A prima facie case under § 1983 requires a plaintiff to demonstrate: (1) a person deprived him of a federal right; and (2) the person who deprived him of that right acted under color of state or territorial law.”).

A State act;

“[C]onduct satisfying the state-action requirement of the Fourteenth Amendment satisfies 30 [Section 1983’s] requirement of action under color of state law.” *Lugar v. Edmondson Oil Co.*, 31 457 U.S. 922, 935 n.18 (1982).

“Like the state-action requirement of the Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its reach “merely private conduct, no matter how discriminatory or wrongful.”” *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S.

And

Tarkanian, 488 U.S. at 192 (citing *Burton v. Wilmington Parking Auth.*, 365 U.S. 715 (1961)).

McKeesport Hosp., 24 F.3d at 524. The Court of Appeals has explained that Supreme Court caselaw concerning “joint action or action in concert suggests that some sort of common purpose or intent must be shown.... [A] private citizen acting

at the orders of a police officer is not generally acting in a willful manner, especially when that citizen has no self-interest in taking the action.... [W]illful participation ... means voluntary, uncoerced participation.” *Harvey v. Plains Twp. Police Dept.*, 421 F.3d 185, 195-96 (3d Cir. 2005).

“[G]enerally, a public employee acts under color of state law while acting in his official capacity or while exercising his responsibilities pursuant to state law.” *West*, 487 U.S. at 50.

“[O]ff-duty police officers who flash a badge or otherwise purport to exercise official authority generally act under color of law.” *Bonenberger v. Plymouth Tp.*, 132 F.3d 20, 24 (3d Cir. 1997).

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However,

Liability under Section 1983 “attaches only to those wrongdoers ‘who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it.’” *National Collegiate Athletic Ass’n v. Tarkanian*, 488 U.S. 179, 191 (1988) (quoting *Monroe v. Pape*, 365 U.S. 167, 172 (1961)). “The traditional definition of acting under color of state law requires that the defendant in a § 1983 action have exercised power ‘possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.’” *West v. Atkins*, 487 U.S. 42, 49 (1988) (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)).

The inquiry into the question of action under color of state law “is fact-specific.” *Groman v. Township of Manalapan*, 47 F.3d 628, 638 (3d Cir. 1995). “In the typical case raising a state-action issue, a private party has taken the decisive step that caused the harm to the plaintiff, and the question is whether the State was sufficiently involved to treat that decisive conduct as state action. . . . Thus, in the usual case we ask whether the State provided a mantle of authority that enhanced the power of the harm-causing individual actor.” *Tarkanian*, 488 U.S. at 192. Circumstances that can underpin a finding of state action include the following:

- A finding of “‘a sufficiently close nexus between the state and the challenged action of the [private] entity so that the action of the latter may fairly be treated as that of the State itself.’”
- A finding that “the State create[d] the legal framework governing the conduct.”
- A finding that the government “delegate[d] its authority to the private actor.”
- A finding that the government “knowingly accept[ed] the benefits derived from unconstitutional behavior.”

□ A finding that “the private party has acted with the help of or in concert with state 5 officials.” For an instruction on private action in concert with state officials, see 6 Instruction 4.4.3. 7

□ A finding that the action “‘result[ed] from the State's exercise of “coercive power.””

□ A finding that “‘the State provide[d] “significant encouragement, either overt or covert.””

□ A finding that “‘a nominally private entity . . . is controlled by an “agency of the State.””

□ A finding that “‘a nominally private entity . . . has been delegated a public function by the State.”

□ A finding that “‘a nominally private entity . . . is “entwined with governmental policies,” or [that] government is “entwined in [its] management or control.””

--- Centrally -

Citing an Appellate case “.. a state employee who pursues purely private motives and whose interaction with the victim is unconnected with his execution of official duties does not act under color of law.” Bonenberger, 132 F.3d at 24.”

However; that is not the case here.

A left wing based Social Justice advocacy with ties to the State have created a Due Process violation creating unnecessary management of my assets and allienatiof of my rights into social justice advocacy for the purpose of illegal exploitation of those genetic assets by social justice advocacy.

The parties of Plaintiff and Defendant are, respectively, are ultra-right wing white male Plaintiff and some ultra left wing Social Justice advocates needing genetic good cause medical assets from Plaintiff, gaining rights to those assets through the acts of fraud this suit will establish.

